

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary
Immediate Suspension of the Family
Child Care License of Maureen Ide

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on August 29, 2011, and August 31, 2011, at the Dakota County Judicial Center, 1560 Highway 55, Hastings, Minnesota. The OAH record closed on September 9, 2011, upon receipt of the County's post-hearing submission.¹

Margaret Horsch, Assistant Dakota County Attorney, 1560 Highway 55, Hastings, MN 55033, appeared for Dakota County Social Services (County) and the Minnesota Department of Human Services (Department). Marc Kurzman, Kurzman Grant Law Office, 219 SE Main Street, Suite 403, Minneapolis, MN 55414, appeared for Maureen Ide (Licensee).

STATEMENT OF ISSUE

Should the temporary immediate suspension of the family child care license of Maureen Ide remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in her care?

The Administrative Law Judge concludes that there is there is reasonable cause to believe that the Licensee's failure to comply with supervision rules poses an imminent risk of harm to the health, safety, or rights of children in Licensee's care and recommends that the Commissioner affirm the order of temporary immediate suspension.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

¹ On August 29, 2011, the Administrative Law Judge attempted to conduct the hearing with counsel for Maureen Ide participating by telephone. Because of technical difficulties, that effort was abandoned, and the hearing was rescheduled to take place on August 31, 2011, with counsel for Ms. Ide participating in person.

FINDINGS OF FACT

1. Maureen Ide has been a licensed provider of family child care since 2001. She lives at 3429 71st Street East in Inver Grove Heights, Minnesota. The home is located at the approximate intersection of 71st Street East and Clay Avenue. Clay Avenue runs north-south between 71st Street East and 72nd Street East, which is a busy road. There are eight homes on the east side of Clay Avenue between 71st and 72nd Streets East. There are no sidewalks in this area.²

2. Ms. Ide's home is one story. There is a front door that leads directly into the living/dining room. There is a sliding glass door in the dining room that leads to the back yard, which is fenced. The kitchen is adjacent to the dining room; it has a door that leads into the attached garage. There is a service door in the garage that leads to the driveway.³

3. Ms. Ide has a C3 license, which means that she can provide care for up to 14 children of various ages, as long as two adults are present to provide supervision.⁴ A licensed provider must be the primary provider of care in the residence.⁵

4. Ms. Ide has physical problems with her knees and back that require her to take breaks from child care in the morning and afternoon and during naptime. She takes breaks and rests either in the master bedroom or in a TV room, both of which are located at the back of the house. She sometimes has appointments to see a chiropractor or orthopedic specialist for these problems during daycare hours.⁶

5. Ms. Ide has received three correction orders in the past for violation of supervision rules.⁷ On June 29, 2005, her licensing worker made an unannounced visit and, after a lengthy delay, an assistant or helper answered the door. Ms. Ide was not there. The licensing worker issued a correction order. On June 24, 2008, the licensing worker was conducting a relicensing visit, and a correction order was issued to Ms. Ide for having placed an infant in a swing in the back bedroom, with the door closed. In addition, on February 8, 2010, an assistant was changing the diaper of an infant [C.J.], who had been placed on a changing table. The assistant walked away to deal with a disruption caused by other children, and C.J. fell off the table to the floor. A correction order for lack of supervision was issued regarding this incident as well.⁸ The infant had bumps

² Ex. 4.

³ Testimony of Becky Elrasheedy; Testimony of Jessica Simonson.

⁴ Minn. R. 9502.0367 C (3) (2009); Test. of B. Elrasheedy. All citations to Minnesota Rules are to the 2009 edition.

⁵ Minn. R. 9502.0365, subp. 5.

⁶ Testimony of Maureen Ide; Test. of J. Simonson.

⁷ Test. of B. Elrasheedy.

⁸ *Id.*

and bruises and was taken to the hospital for tests, but no serious injuries were diagnosed.⁹

6. On July 21, 2011, Jessica Simonson was Ms. Ide's full-time assistant. There were nine children in care that day, including C.J., who was then aged two and one-half years.¹⁰

7. At approximately 4 p.m. in the afternoon, a neighbor who lived at 7169 Clay Avenue (about seven homes south of Ms. Ide) noticed a young child walking south on Clay Avenue toward 72nd Street. The child walked up the neighbor's driveway and touched a truck, then walked back to the street, heading south again. When the child turned around and began walking north on Clay Avenue, he began crying. The son of another neighbor was outside mowing his lawn. He noticed the child crying, stopped the mower, and brought the child to three different neighbors, none of whom recognized the child or knew where he belonged. At about 4:44 p.m., the police were called, and a neighbor gave the child some water and a Popsicle.¹¹

8. The child was C.J., and before the police arrived, Ms. Simonson had gone outside to search for him. She found him outside, waiting for the police with neighbors who lived about three homes south of Ms. Ide. Ms. Simonson joined them and explained to them and to the police (who arrived at 4:54 p.m.) that he was a daycare child who had somehow gotten out of the house.¹² Based on the reports by neighbors, the child was outside and unattended by anyone from the daycare home for 30 to 40 minutes.¹³

9. When C.J.'s mother picked him up from the daycare shortly afterward, neither Ms. Ide nor Ms. Simonson told her that he had wandered from the home that day. The next morning, Maureen Ide telephoned the mother, described the incident generally, stated that the police had been called and social services would likely be involved, and apologized.¹⁴

10. On July 25, 2011, the incident was referred to Dakota County Child Protection for investigation of possible neglect. A child protection investigator made an unannounced visit to Ms. Ide's home during the afternoon that day. Ms. Simonson opened the door and requested that the investigator enter through the garage door because children were sleeping in the living room and Ms. Ide was resting. In the ensuing interview of Ms. Ide and Ms. Simonson, they indicated that C.J. must have slipped out the front door at about 4:15 p.m., when another parent had arrived to pick up two children. They did not immediately notice his absence because they and the children were unpacking a box of new toys that

⁹ Testimony of B.J.

¹⁰ Test. of J. Simonson; Ex. 1 at 2.

¹¹ Ex. 1.

¹² Test. of J. Simonson.

¹³ Ex. 1 at 4.

¹⁴ Test. of B.J.; Test. of M. Ide; Ex. 1 at 3.

had just been delivered. After searching for C.J. in the house and yard, Ms. Simonson went outside and found him down the street with the neighbors. Ms. Ide and Ms. Simonson agreed that C.J. had been unsupervised for a minimum of 30 minutes.¹⁵

11. There is a childproof handle on the front door of Ms. Ide's home. Ms. Ide initially stated that the parent who had arrived to pick up her children around 4:15 must have left the front door open; the parent, however, denied leaving the front door open. Ms. Ide later stated that C.J. must have slipped out when Ms. Ide opened the door to bring in the box of toys, shortly after the parent had arrived.¹⁶ No one knows for certain how C.J. got out of the home.

12. On July 26, 2011, the Department issued an Order of Temporary Immediate Suspension.¹⁷ When the licensing worker arrived at the home to serve the Order that day, Ms. Simonson answered the door and stated that Ms. Ide was in the back room.¹⁸

13. By letter dated July 28, 2011, Ms. Ide requested an appeal of the Order of Temporary Immediate Suspension. She acknowledged the seriousness of the matter and described a detailed safety plan that she proposed to implement to increase the security of her home. She also acknowledged her obligation to be the primary caregiver in the residence and expressed her understanding that assistants were to be used only to help her provide good care for the children. She pledged to make any other changes to her program that the Department thought necessary to ensure the safety of children.¹⁹

14. On August 12, 2011, Dakota County Child Protection authorities made a determination of maltreatment by neglect against Ms. Ide. She made a timely request for reconsideration.

15. Some parents and grandparents of children formerly in the care of Ms. Ide describe her as an excellent provider who has always been safety-conscious.²⁰ C.J.'s mother also supports Ms. Ide.²¹ Other parents were more critical of Ms. Ide's care, stating that she was often gone and was less involved in caring for the children than were her assistants.²²

16. On August 1, 2011, the County requested assignment of an administrative law judge. On August 10, 2011, the County served the Notice and Order for Hearing on Ms. Ide by U.S. Mail.

¹⁵ Ex. 1 at 3.

¹⁶ Ex. 1 at 2-3 & 5.

¹⁷ Ex. 3.

¹⁸ Test. of B. Elrasheedy.

¹⁹ Ex. 5.

²⁰ Testimony of Lori Zubrod; Testimony of Tracy Teuber; Ex. 1 at 5 (Rosenzweig).

²¹ Test. of B.J.

²² Ex. 1 at 4-5.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a, and 14.50 (2010).²³

2. The Department gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

3. Providers of family child care are required to be within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child. For the school age child, it means a caregiver being available for assistance and care so that the child's health and safety is protected.²⁴

4. If a license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the Commissioner shall act immediately to temporarily suspend the license.²⁵

5. If a license holder appeals an order immediately suspending a license, the Commissioner shall request assignment of an administrative law judge within five working days of receipt of the license holder's timely appeal. A hearing must be conducted within 30 calendar days of the request for assignment.²⁶

6. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension.²⁷

7. The burden of proof in expedited hearings on a temporary immediate suspension shall be limited to the Commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.²⁸ "Reasonable cause" means there exist specific articulable facts or circumstances which provide a reasonable

²³ All citations to Minnesota Statutes are to the 2010 edition.

²⁴ Minn. R. 9502.0315, subp. 29a (2009).

²⁵ Minn. Stat. § 245A.07, subd. 2

²⁶ Minn. Stat. § 245A.07, subd. 2a(a).

²⁷ *Id.*

²⁸ *Id.*

suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.²⁹

8. The Commissioner has demonstrated that there is reasonable cause to believe that the license holder's failure to comply with supervision rules poses an imminent risk of harm to the health, safety, or rights of persons served by the program.

Based upon the foregoing Conclusions of Law, and for the reasons explained in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services AFFIRM the temporary immediate suspension of the family child care license of Maureen Ide.

Dated: September 19, 2011

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (Commissioner) will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. §§ 14.61 and 245A.07, subd. 2a (b), the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the Commissioner. The record shall close at the end of the ten-day period for submission of exceptions. The Commissioner then has ten (10) working days from the close of the record to issue her final decision. Parties should contact Lucinda Jesson, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651) 431-2907, to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

²⁹ Minn. Stat. § 245A.07, subd. 2a(a).

MEMORANDUM

The timing of this case was unusual in that the child protection investigation had concluded, and a maltreatment determination had been made, before the hearing on the temporary immediate suspension took place. The Licensee requested, both before and after the hearing in this case, that the scope of the hearing include her appeal of the neglect determination. The ALJ advised the Licensee before and after the hearing that the statutes do not permit consolidation of her appeal of the maltreatment determination with a hearing on the temporary immediate suspension,³⁰ but do permit or require consolidation of the appeals in a hearing on any subsequent licensing sanction.³¹ If the parties wish to stipulate that the record in this case may be used in a future appeal of the maltreatment determination, they are free to do so. But that issue is not before the ALJ at this time.

During the hearing on August 31, 2011, the Licensee objected to the receipt in evidence of Exhibit 1, which is the child protection assessment that summarizes the interviews conducted in the course of the investigation. The objection was that the assessment is hearsay. The ALJ overruled the objection on the basis that the use of hearsay is permitted in these proceedings.³²

During the testimony of the child protection worker, the worker stated that most if not all of the interviews she had conducted had been tape-recorded.³³ The Licensee then amended the objection to Exhibit 1 as not being the best evidence of what other witnesses had said. The Licensee requested copies of those recorded interviews, and the County agreed to provide them after the conclusion of the hearing subject to a protective order. The Licensee's counsel agreed to advise the ALJ if he wished to supplement the record in any way after reviewing the recordings.

By letter dated September 7, 2011, counsel for the Licensee pointed out that some of the witness interviews were not recorded at all, or were recorded incompletely³⁴; and some were supposed to be recorded, but the recorder apparently malfunctioned and did not record the witness statements.³⁵ There was no suggestion, however, that the child protection worker had improperly

³⁰ See Minn. Stat. § 245A.07, subd. 2a(a) (scope of the hearing on a temporary immediate suspension is limited to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order regarding a licensing sanction issued following the immediate suspension).

³¹ See Minn. Stat. § 245A.08, subd. 2a(a) (providing for consolidation of issues when a licensing sanction is based on a maltreatment determination). The maltreatment determination in this case was not made until August 12, 2011, and could not have been the basis for the order of temporary immediate suspension on July 26, 2011.

³² See Minn. Stat. §§ 245A.08, subd. 3(a), and 14.60, subd. 1; and Minn. R. 1400.7300, subp. 1.

³³ See Minn. Stat. § 626.556, subd. 10(j)(1) (audio recordings of interviews with witnesses shall be used in an investigation whenever possible).

³⁴ These were interviews of two daycare parents.

³⁵ These were interviews of the two neighbors who noticed C.J. in the street.

summarized the recorded interviews that were provided. The Licensee argued instead that the reliability of the child protection worker as a report generator had not been established; that the interview statements were hearsay, and the assessment document was not the best evidence; and that he was unable to effectively cross-examine the child protection worker without the complete set of recordings. The Licensee did not seek to supplement the evidentiary record.

As noted above, witness statements are explicitly admissible under the statutes and rules governing these proceedings. More importantly, in this case the critical facts are undisputed by the Licensee. The child got out of the house and was gone for a minimum of 30 minutes. The Licensee does not know how he got out of the house, or precisely when he got out of the house. She has been cited for lack of supervision in the past. Based on these facts, the record is sufficient to conclude that the temporary immediate suspension should continue in effect until the commissioner makes a final decision on a licensing sanction.

K.D.S.